

§ 1005.3

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§ 1005.2 Definitions.

Except as otherwise provided in subpart B, for purposes of this part, the following definitions apply:

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§ 1005.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§ 1005.3(b)(2) and (3), 1005.10(b), (d), and (e), 1005.13, and 1005.20 this part applies to any person, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376.

(b) *Electronic fund transfer.* (1) *Definition.* The term “electronic fund transfer” means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. The term includes, but is not limited to:

- (i) Point-of-sale transfers;
- (ii) Automated teller machine transfers;
- (iii) Direct deposits or withdrawals of funds;
- (iv) Transfers initiated by telephone; and
- (v) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(2) *Electronic fund transfer using information from a check.* (i) This part applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer.

(ii) The person initiating an electronic fund transfer using the consumer's check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an electronic fund transfer, and obtain a consumer's authorization for each transfer. A con-

sumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy thereof, or a substantially similar notice, must be provided to the consumer at the time of the transaction.

(iii) A person may provide notices that are substantially similar to those set forth in appendix A–6 to comply with the requirements of this paragraph (b)(2).

(3) *Collection of returned item fees via electronic fund transfer.* (i) *General.* The person initiating an electronic fund transfer to collect a fee for the return of an electronic fund transfer or a check that is unpaid, including due to insufficient or uncollected funds in the consumer's account, must obtain the consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer from his or her account to pay the fee for the returned item or transfer if the person collecting the fee provides notice to the consumer stating that the person may electronically collect the fee, and the consumer goes forward with the underlying transaction. The notice must state that the fee will be collected by means of an electronic fund transfer from the consumer's account if the payment is returned unpaid and must disclose the dollar amount of the fee. If the fee may vary due to the amount of the transaction or due to other factors, then, except as otherwise provided in paragraph (b)(3)(ii) of this section, the person collecting the fee may disclose, in place of the dollar amount of the fee, an explanation of how the fee will be determined.

(ii) *Point-of-sale transactions.* If a fee for an electronic fund transfer or check returned unpaid may be collected electronically in connection with a point-of-sale transaction, the person initiating an electronic fund transfer to collect the fee must post the notice described in paragraph (b)(3)(i) of this

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section in a prominent and conspicuous location. The person also must either provide the consumer with a copy of the posted notice (or a substantially similar notice) at the time of the transaction, or mail the copy (or a substantially similar notice) to the consumer's address as soon as reasonably practicable after the person initiates the electronic fund transfer to collect the fee. If the amount of the fee may vary due to the amount of the transaction or due to other factors, the posted notice may explain how the fee will be determined, but the notice provided to the consumer must state the dollar amount of the fee if the amount can be calculated at the time the notice is provided or mailed to the consumer.

(c) *Exclusions from coverage.* The term "electronic fund transfer" does not include:

(1) *Checks.* Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.

(2) *Check guarantee or authorization.* Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a consumer's account.

(3) *Wire or other similar transfers.* Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.

(4) *Securities and commodities transfers.* Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is:

(i) Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;

(ii) Purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or

(iii) Held in book-entry form by a Federal Reserve Bank or Federal agency.

(5) *Automatic transfers by account-holding institution.* Any transfer of

funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:

(i) Between a consumer's accounts within the financial institution;

(ii) From a consumer's account to an account of a member of the consumer's family held in the same financial institution; or

(iii) Between a consumer's account and an account of the financial institution, except that these transfers remain subject to §1005.10(e) regarding compulsory use and sections 916 and 917 of the Act regarding civil and criminal liability.

(6) *Telephone-initiated transfers.* Any transfer of funds that:

(i) Is initiated by a telephone communication between a consumer and a financial institution making the transfer; and

(ii) Does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.

(7) *Small institutions.* Any preauthorized transfer to or from an account if the assets of the account-holding financial institution were \$100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed \$100 million, the institution's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed \$100 million. Preauthorized transfers exempt under this paragraph (c)(7) remain subject to §1005.10(e) regarding compulsory use and sections 916 and 917 of the Act regarding civil and criminal liability.

EFFECTIVE DATE NOTES: 1. At 77 FR 6285, Feb. 7, 2012, §1005.3 was amended by revising paragraph (a), effective Feb. 27, 2013. For the convenience of the user, the revised text is set forth as follows:

§ 1005.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§1005.3(b)(2) and (3), 1005.10(b), (d), and (e), and 1005.13, this part applies to any person.

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The requirements of subpart B apply to remittance transfer providers.

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2. At 77 FR 40459, July 10, 2012, §1005.3 was amended by revising (a), effective Feb. 27, 2013. For the convenience of the user, the revised text is set forth as follows:

§ 1005.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§1005.3(b)(2) and (3), 1005.10(b), (d), and (e), 1005.13, and 1005.20, this part applies to any person, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376. The requirements of subpart B apply to remittance transfer providers.

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§ 1005.4 General disclosure requirements; jointly offered services.

(a)(1) *Form of disclosures.* Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep, except as otherwise provided in this part. The disclosures required by this part may be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this part.

(2) *Foreign language disclosures.* Disclosures required under this part may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.

(b) *Additional information; disclosures required by other laws.* A financial institution may include additional information and may combine disclosures required by other laws (such as the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) or the Truth in Savings Act (12 U.S.C. 4301

et seq.) with the disclosures required by this part.

(c) *Multiple accounts and account holders.*(1) *Multiple accounts.* A financial institution may combine the required disclosures into a single statement for a consumer who holds more than one account at the institution.

(2) *Multiple account holders.* For joint accounts held by two or more consumers, a financial institution need provide only one set of the required disclosures and may provide them to any of the account holders.

(d) *Services offered jointly.* Financial institutions that provide electronic fund transfer services jointly may contract among themselves to comply with the requirements that this part imposes on any or all of them. An institution need make only the disclosures required by §§1005.7 and 1005.8 that are within its knowledge and within the purview of its relationship with the consumer for whom it holds an account.

§ 1005.5 Issuance of access devices.

(a) *Solicited issuance.* Except as provided in paragraph (b) of this section, a financial institution may issue an access device to a consumer only:

(1) In response to an oral or written request for the device; or

(2) As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

(b) *Unsolicited issuance.* A financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is:

(1) Not validated, meaning that the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;

(2) Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;

(3) Accompanied by the disclosures required by §1005.7, of the consumer's rights and liabilities that will apply if the access device is validated; and

(4) Validated only in response to the consumer's oral or written request for validation, after the institution has